

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
(Richmond Division)

CODEMASTERS GROUP HOLDINGS
LIMITED, a foreign corporation,

Plaintiff,

v.

SOUTHPEAK INTERACTIVE
CORPORATION, a Delaware Corporation,

Defendant.

Case No.: 3:11-cv-068 (JRS)

FIRST AMENDED COMPLAINT

Plaintiff Codemasters Group Holdings Limited (“Codemasters”), by counsel and pursuant to Fed. R. Civ. P. 15(a)(1)(B), brings this action against Southpeak Interactive Corporation (“Southpeak”) seeking damages and other appropriate relief arising from Southpeak’s breach of a Settlement Agreement, as amended, between Southpeak and Codemasters. In support of its claims, Codemasters alleges and states as follows:

PARTIES

1. Codemasters is a foreign corporation organized under the laws of the United Kingdom, having its principal place of business at Codemasters Campus, Stoneythorpe, Southam, Warwickshire CV47 2DL, England.

2. Codemasters is informed and believes and thereon alleges that defendant Southpeak is a Delaware corporation, having its principal place of business at 2900 Polo Parkway, Midlothian, Virginia 23113.

JURISDICTION AND VENUE

3. The matter in controversy in the above-entitled action exceeds the sum of \$75,000. Jurisdiction is founded on 28 U.S.C. § 1332(a).

4. Venue is proper in this district because defendant resides in this district.

GENERAL ALLEGATIONS

5. Codemasters is a leading developer and international publisher of computer and video games.

6. Codemasters is informed and believes and thereon alleges that Southpeak distributes computer and video games.

7. Prior to 2007, Codemasters and Southpeak entered into an agreement pursuant to which Southpeak agreed to distribute certain Codemasters videogame products in the United States (the “Agreement”).

8. Pursuant to the Agreement, Codemasters agreed to and did ship to Southpeak certain videogames for Southpeak’s distribution in the United States.

9. Southpeak agreed to pay Codemasters on a per game-unit basis for the videogame products that Codemasters shipped to Southpeak.

10. Pursuant to the Agreement, Codemasters issued invoices to Southpeak for the videogame products that Codemasters shipped to Southpeak.

11. Southpeak failed to pay all amounts due and owing to Codemasters pursuant to the Agreement for the periods June 2008 through April 2009.

12. Beginning in September 2009, Codemasters and Southpeak negotiated a settlement agreement with respect to the outstanding monies that Southpeak owed to Codemasters, and on or about November 27, 2009, Codemasters and Southpeak executed a settlement agreement pursuant to which Southpeak agreed to pay Codemasters the amount of \$2,000,000, \$200,000 of which had already been paid (“Settlement Agreement”). A true and correct copy of the Settlement Agreement is attached hereto as Exhibit A. Pursuant to Section 2.1 of the Settlement Agreement, Southpeak agreed to pay Codemasters the remaining \$1,800,000 according to the following payment plan:

- a. \$100,000 within two days of execution of the Settlement Agreement;
- b. \$100,000 on or before November 30, 2009;

- c. \$200,000 on or before December 15, 2009;
- d. \$200,000 on or before December 31, 2009;
- e. \$200,000 on or before January 15, 2010;
- f. \$250,000 on or before January 31, 2010;
- g. \$250,000 on or before February 15, 2010;
- h. \$250,000 on or before February 28, 2010; and
- i. \$250,000 on or before March 15, 2010.

13. The Settlement Agreement provided for a ten day cure period for late payments, after which interest shall accrue at a rate of three percent per annum.

14. Southpeak belatedly made payments to Codemasters as follows:

- a. \$100,000 due within two days of execution of the Settlement Agreement paid on December 2, 2009;
- b. \$100,000 due on or before November 30, 2009 paid on December 11, 2009;
- c. \$200,000 due on or before December 15, 2009 paid over four installments of \$50,000 each on February 24, 2010, March 11, 2010, April 2, 2010, and April 7, 2010; and
- d. \$200,000 due on or before December 31, 2009 partially paid in the amount of \$35,000 on April 21, 2010.

15. As of April 21, 2010, the total delinquent and outstanding balance on the Settlement Agreement, not including interest, was \$1,365,000.

16. In or about May, 2010, Codemasters demanded that Southpeak continue making payments to Codemasters and further demanded that Southpeak submit a repayment plan.

17. On May 15, 2010, Southpeak responded, through its Chairman, Terry Phillips, who represented that Southpeak had received a commitment for two capital infusions, one of which was for \$6,000,000 and was scheduled to close on June 1, 2010. Mr. Phillips also represented that Southpeak's line of credit was being increased. According to Mr. Phillips, both the capital infusions and credit line increase would give Southpeak the cash flow necessary to

pay the amount due to Codemasters in full.

18. Southpeak's capital infusion closed on or before the end of June 2010.

19. By June 26, 2010, Southpeak had access to funds and Codemasters demanded payment once again.

20. On July 27, 2010, Southpeak represented that it would begin paying Codemasters immediately and that it would work with Codemasters on a new payment plan.

21. On July 29, 2010, Southpeak submitted a proposed payment schedule representing that it would have the cash flow to pay Codemasters on a weekly basis as follows:

- a. \$50,000 on August 16, 2010;
- b. \$50,000 on August 23, 2010;
- c. \$50,000 on August 30, 2010;
- d. \$50,000 on September 6, 2010;
- e. \$50,000 on September 13, 2010;
- f. \$50,000 on September 20, 2010;
- g. \$75,000 on September 27, 2010;
- h. \$75,000 on October 4, 2010;
- i. \$75,000 on October 11, 2010;
- j. \$75,000 on October 18, 2010;
- k. \$75,000 on October 25, 2010;
- l. \$75,000 on November 1, 2010;
- m. \$75,000 on November 8, 2010;
- n. \$75,000 on November 15, 2010;
- o. \$100,000 on November 22, 2010;
- p. \$100,000 on November 29, 2010;
- q. \$100,000 on December 6, 2010; and
- r. \$100,000 on December 23, 2010.

22. Southpeak did not make any payments to Codemasters in August or September

2010.

23. On or about September 22, 2010, Codemasters offered Southpeak an Amendment to the Settlement Agreement (the "Settlement Agreement Amendment"), which Southpeak accepted by partial performance. A true and correct copy of the Settlement Agreement Amendment is attached hereto as Exhibit B. The Settlement Agreement Amendment sets forth the following payment plan:

- a. \$25,000 to be paid on or before September, 24 2010;
- b. \$25,000 to be paid on or before October 1, 2010;
- c. \$25,000 to be paid on or before October 8, 2010;
- d. \$25,000 to be paid on or before October 15, 2010;
- e. \$25,000 to be paid on or before October 22, 2010;
- f. \$25,000 to be paid on or before October 29, 2010;
- g. \$50,000 to be paid on or before November 5, 2010;
- h. \$50,000 to be paid on or before November 12, 2010;
- i. \$50,000 to be paid on or before November 19, 2010;
- j. \$50,000 to be paid on or before November 26, 2010;
- k. \$50,000 to be paid on or before December 3, 2010;
- l. \$75,000 to be paid on or before December 10, 2010;
- m. \$75,000 to be paid on or before December 17, 2010;
- n. \$75,000 to be paid on or before December 24, 2010;
- o. \$75,000 to be paid on or before December 31, 2010;
- p. \$172,500 to be paid on or before January 7, 2011;
- q. \$172,500 to be paid on or before January 14, 2011;
- r. \$172,500 to be paid on or before January 21, 2011; and
- s. \$185,184 to be paid on or before January 28, 2011.

(See Exhibit B at § 1.2.)

24. Pursuant to the Settlement Agreement Amendment, Southpeak made, and

Codemasters accepted, three payments of \$25,000 each on October 4, 2010, October 19, 2010, and October 29, 2010. See Exhibit C, attached hereto.

25. By virtue of Southpeak's payments and partial performance under the Settlement Agreement Amendment, the Amendment is an enforceable contract.

26. Section 1.9 of the Settlement Agreement Amendment expressly states that the jurisdiction clause within Clause 12 of the Settlement Agreement "shall not apply to Codemasters if Southpeak fails to pay Codemasters any part of the Amended Settlement Fee when due." See Exhibit B at § 1.9.

27. Following its October 4, 2010, October 19, 2010, and October 29, 2010 payments, Southpeak failed to make any payments to Codemasters under the Settlement Agreement Amendment when they became due, with the exception of one additional payment of \$25,000 received on December 1, 2010 as set forth below.

28. On November 3, 2010, Southpeak offered Codemasters a revised payment schedule to that set forth in the Settlement Agreement Amendment. A true and correct copy of the revised payment schedule offered by Codemasters is attached hereto as Exhibit D (the "Proposal"). Pursuant to the Proposal, Southpeak agreed to pay Codemasters on a weekly basis as follows:

- a. \$25,000 to be paid on or before November 12, 2010;
- b. \$25,000 to be paid on or before November 19, 2010;
- c. \$25,000 to be paid on or before November 26, 2010;
- d. \$25,000 to be paid on or before December 3, 2010;
- e. \$25,000 to be paid on or before December 10, 2010;
- f. \$75,000 to be paid on or before December 17, 2010;
- g. \$100,000 to be paid on or before December 24, 2010;
- h. \$100,000 to be paid on or before December 31, 2010;
- i. \$100,000 to be paid on or before January 7, 2011; and
- j. \$150,000 to be paid weekly, beginning on January 14, 2011, until the outstanding

balance is paid.

29. On December 1, 2010, Southpeak made, and Codemasters accepted, one payment of \$25,000, leaving a principal balance due Codemasters in the amount of \$1,265,000. See Exhibit C.

30. Southpeak has failed to make any additional payments under the Settlement Agreement Amendment or the Amendment's revised payment schedule set forth in the Proposal.

31. Southpeak is indebted to Codemasters in the amount of \$1,265,000 plus interest and late fees, all of which is now due and payable.

COUNT I
(Breach of Contract)

32. Codemasters incorporates by reference the allegations set forth in Paragraphs 1 through 31 of this Complaint.

33. The Settlement Agreement, as amended by the Settlement Agreement Amendment, is a valid, enforceable contract.

34. Codemasters has performed all of its obligations under the Settlement Agreement, as amended, and satisfied all conditions precedent to bringing this breach of contract action.

35. Southpeak has breached its obligations under the Settlement Agreement, as amended, by failing to pay Codemasters pursuant to the payment schedule set out in the Settlement Agreement Amendment and has further failed to make the payments due Codemasters under the Proposal.

36. As a direct and proximate result of the foregoing, Codemasters has suffered, and will continue to suffer, damages in the amount of \$1,265,000, plus interest and late fees at the contractually agreed rate, plus costs and attorneys' fees.

PRAYER FOR RELIEF

WHEREFORE, Codemasters prays for judgment against Southpeak as follows:

1. For compensatory damages according to proof to be presented at the time of trial;

2. For costs and reasonable attorney's fees; and
3. For such other relief as the Court deems appropriate.

DATED: March 10, 2011

Respectfully submitted,

/s/
Brandon H. Elledge (VSB#: 45349)
brandon.elledge@hklaw.com
HOLLAND & KNIGHT LLP
1600 Tysons Boulevard, Suite 700
McLean, Virginia 22102
Telephone: (703) 720-8015
Facsimile: (703) 720-8610

*Counsel for Plaintiff
Codemasters Group Holdings Limited*

Of Counsel:

John M. Toriello, Esq.
Christine Tramontano, Esq.
HOLLAND & KNIGHT LLP
31 West 52nd Street
New York, New York 10059
Telephone: (212) 513-3200
Facsimile: (212) 385-9010

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of March, 2011, I electronically filed the foregoing First Amended Complaint with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to:

William R. Poynter
WILLIAMS MULLEN
222 Central Park Avenue, Suite 1700
Virginia Beach, Virginia 23462
Telephone: (757) 499-8800
Facsimile: (757) 473-0395
wpoynter@williamsmullen.com

Robert C. Van Arnam
WILLIAMS MULLEN
301 Fayetteville Street, Suite 1700
Raleigh, NC 27601
Telephone: (919) 981-4055
Facsimile: (919) 981-4300
rvanarnam@williamsmullen.com

Counsel for Defendant Southpeak Interactive Corporation

/s/
Brandon H. Elledge (VSB#: 45349)
brandon.elledge@hklaw.com
HOLLAND & KNIGHT LLP
1600 Tysons Boulevard, Suite 700
McLean, Virginia 22102
Telephone: (703) 720-8015
Facsimile: (703) 720-8610

*Counsel for Plaintiff
Codemasters Group Holdings Limited*

Of Counsel:

John M. Toriello, Esq.
Christine Tramontano, Esq.
HOLLAND & KNIGHT LLP
31 West 52nd Street
New York, New York 10059
Telephone: (212) 513-3200
Facsimile: (212) 385-9010